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| 10/526,241 | 11/21/2005 | Alfred von Schuckmann | RIE-24157 | 6871 |
| 24131 7590 05/26/2009 LERNER GREENBERG STEMER LLP P O BOX 2480 HOLLYWOOD, FL 33022-2480 | | | | |
| EXAMINER | | | | |
| WON, BRIAN D | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/526,241

Applicant(s)

SCHUCKMANN, ALFRED VON

Examiner

BRIAN WON

Art Unit

3771

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 55-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 59 and 60 is/are allowed.
- 6) ☒ Claim(s) 55-58 is/are rejected.
- 7) ☒ Claim(s) 61 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/003)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Paper No(s)/Mail Date _____
- 6) ☐ Other: _____

DETAILED ACTION

This office action is in response to the amendment filed on 03/09/09. Applicant has amended claims 55 and 59. Currently, claims 55-61 are pending in the instant application.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zanen et al. (5429122) in view of Bougamont et al. (5239992).

Regarding claim 55, Zanen discloses in figure 2, a powder inhaler comprising a mouthpiece (7) with a suction air channel (17); a storage chamber (3) for storing powder; a recess is formed on a plunger (11) (between the top and lower piece) which linearly moves within the inhaler for apportioning specific amount of powder from the storage chamber to the mixing space (16) such that when a person applies suction, the suction air stream entering through the lateral openings, transports the powder to the mouthpiece; and two air inlets of the lateral openings (16 and 18) is disposed upstream of the recess for emptying the powder from the recess with respective components of the suction air stream (see column 3, lines 46-58)

Zanen does not disclose the recess formed with two openings. However, Bougamont teaches a piston rod (2b) with a dosing chamber (3) formed by two

openings (see figure 1). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the recess of Zanen to a chamber with two openings as taught by Bougamont for improved storage during transportation of powder to the transfer point.

3. Claims 56-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zanen et al. (5429122) in view of Bougamont et al. (5239992) as applied to claim 55 above, and further in view of Altermatt et al. (5263475).

Regarding claim 56, the modified reference of Zanen discloses the dosing chamber being a conical transverse bore (figure 1 of Bougamont clearly shows the dosing chamber (3) being transverse conical shaped) formed in a linearly movable plunger. The modified reference of Zanen does not disclose the plunger being a spindle. However, Altermatt teaches transporting powder to the transfer point by using a recess formed in a spindle (see element 5 in figure 1). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the plunger of Zanen with a spindle as taught by Altermatt for piercing the powder.

Regarding claim 57, the modified reference of Zanen discloses the transverse bore with a portion of small diameter and a portion with a large diameter (see element 3 in figure 1 of Bougamont). The modified reference of Zanen does not disclose air inlet associated with the dosing chamber having the larger diameter having a small diameter than the air inlet of the dosing chamber having the smaller diameter. However, Bougamont teaches air inlet (12) associated with the dosing chamber having the larger diameter having a small diameter than the air inlet (13) (since orifice (9a) causes inlet

air to (13), see column 3, lines 3-10) of the dosing chamber having the smaller diameter. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the air inlets of Zanen with a different size air inlets as taught by Bougamont such that powders can be delivered more effectively.

Regarding claim 58, figure 1 of Zanen discloses the compressed plunger (11) stopped at the mouthpiece (7) forming an extension limiting stop for emptying the powder at the chamber (16) and the modified reference of Zanen discloses the plunger being a spindle.

Allowable Subject Matter

4. Claims 59-60 are allowed.
5. Claim 61 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments with respect to claims 55-58 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN WON whose telephone number is (571)270-7129. The examiner can normally be reached on Monday thru Friday, 9:00 A.M to 5.00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571)272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRIAN WON/
Examiner, Art Unit 3771

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771